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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

RAYMOND KNAPP, individually and ) on behalf of all others similarly ) situated, ) Plaintiff, ) vs. ) PACIFIC CAPITAL FINANCE, LLC; ) DOES 1 through 10, inclusive, ) Defendant(s). )	)	Case No.  <b><u>CLASS ACTION</u></b>  <b>COMPLAINT FOR VIOLATIONS OF:</b>  1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.] 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]  <b><u>DEMAND FOR JURY TRIAL</u></b>
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Plaintiff, RAYMOND KNAPP (“Plaintiff”), on behalf of himself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action for himself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from

1 the illegal actions of PACIFIC CAPITAL FINANCE, LLC (“Defendant”), in  
2 negligently, knowingly, and/or willfully contacting Plaintiff via “telephone  
3 facsimile machine” in violation of the Telephone Consumer Protection Act, 47.  
4 *U.S.C. § 227 et seq.* (“TCPA”), thereby causing Plaintiff and all others similarly  
5 situated to incur the costs of receiving unsolicited advertisement messages via  
6 “telephone facsimile machines” and invading their privacy.

### 7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under 28 *U.S.C. § 1332(d)(2)* because Plaintiff,  
9 a resident of California, seeks relief on behalf of a Class, which will result in at  
10 least one class member belonging to a different state than that of Defendant, a  
11 company with its principal place of business and State of Incorporation in  
12 California state. Plaintiff also seeks up to \$1,500.00 in damages for each call in  
13 violation of the TCPA, which, when aggregated among a proposed class in the  
14 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
15 Therefore, both diversity jurisdiction and the damages threshold under the Class  
16 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

17 3. Venue is proper in the United States District Court for the Northern  
18 District of California pursuant to 28 *U.S.C. § 1391(b)(2)* because Defendant does  
19 business within the state of California and Plaintiff resides within this District.

### 20 **PARTIES**

21 4. Plaintiff, RAYMOND KNAPP (“Plaintiff”), is a natural person  
22 residing in Contra Costa County, California and is a “person” as defined by 47  
23 *U.S.C. § 153 (39)*.

24 5. Defendant, PACIFIC CAPITAL FINANCE LLC (“Defendant” or  
25 “DEFENDANT”), is a small business loan company, and is a “person” as defined  
26 by 47 *U.S.C. § 153 (39)*.

27 6. The above named Defendant, and its subsidiaries and agents, are  
28 collectively referred to as “Defendants.” The true names and capacities of the

1 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
2 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
3 names. Each of the Defendants designated herein as a DOE is legally responsible  
4 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
5 Complaint to reflect the true names and capacities of the DOE Defendants when  
6 such identities become known.

7 7. Plaintiff is informed and believes that at all relevant times, each and  
8 every Defendant was acting as an agent and/or employee of each of the other  
9 Defendants and was acting within the course and scope of said agency and/or  
10 employment with the full knowledge and consent of each of the other Defendants.  
11 Plaintiff is informed and believes that each of the acts and/or omissions complained  
12 of herein was made known to, and ratified by, each of the other Defendants.

### 13 **FACTUAL ALLEGATIONS**

14 8. Beginning in or around January 2017, Defendant contacted Plaintiff  
15 on his telephone facsimile numbers ending in -2428, in an effort to sell or solicit its  
16 services.

17 9. Defendant contacted Plaintiff via facsimile from telephone numbers  
18 confirmed to belong to Defendant, including without limitation (855) 595-3766.

19 10. Defendant contacted Plaintiff between on or around December of  
20 2016 and April of 2017 in an effort to solicit its business.

21 11. Defendant's messages constituted "telephone solicitation" as defined  
22 by the TCPA, 47 U.S.C. § 227(a)(4) and "unsolicited advertisement" as defined by  
23 the TCPA, 47 U.S.C. § 227(a)(5).

24 12. Defendant used an "telephone facsimile machine" as defined by 47  
25 U.S.C. § 227(a)(3) to place its calls to Plaintiff seeking to sell or solicit its business  
26 services.

27 13. Defendant's calls constituted calls that were not for emergency  
28 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

1        14. Defendant's calls were placed to telephone facsimile numbers  
2 assigned to a telephone service for which Plaintiff incurs a charge for incoming  
3 messages.

4        15. Plaintiff is not a customer of Defendant's services and has never  
5 provided any personal information, including his telephone facsimile number(s), to  
6 Defendant for any purpose whatsoever. Accordingly, Defendant never received  
7 Plaintiff's "prior express consent" to receive calls using a telephone facsimile  
8 machine pursuant to *47 U.S.C. § 227(b)(1)(C)*.

9        16. Furthermore, the messages that Defendant sent to Plaintiff lacked the  
10 "opt-out" notice pursuant to *47 U.S.C. § 227(b)(2)(D)*.

11                                    **CLASS ALLEGATIONS**

12        17. Plaintiff brings this action on behalf of himself and all others similarly  
13 situated, as a member of the proposed class (hereafter "The Class") defined as  
14 follows:

15                                    All persons within the United States who received any  
16 telephone facsimile messages from Defendant to said  
17 person's telephone facsimile number made through the  
18 use of any telephone facsimile machine and such person  
19 had not previously consented to receiving such messages  
20 and such messages did not contain any opt-out notice  
21 within the four years prior to the filing of this Complaint

22        18. Plaintiff represents, and is a member of, The Class, consisting of all  
23 persons within the United States who received any telephone facsimile messages  
24 from Defendant to said person's telephone facsimile number made through the use  
25 of any telephone facsimile machine and such person had not previously not  
26 provided their telephone facsimile number to Defendant within the four years prior  
27 to the filing of this Complaint, nor did the telephone facsimile message contain an  
28 opt-out notice.

1           19. Defendant, its employees and agents are excluded from The Class.  
2 Plaintiff does not know the number of members in The Class, but believes the Class  
3 members number in the thousands, if not more. Thus, this matter should be certified  
4 as a Class Action to assist in the expeditious litigation of the matter.

5           20. The Class is so numerous that the individual joinder of all of its  
6 members is impractical. While the exact number and identities of The Class  
7 members are unknown to Plaintiff at this time and can only be ascertained through  
8 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
9 The Class includes thousands of members. Plaintiff alleges that The Class members  
10 may be ascertained by the records maintained by Defendant.

11           21. Plaintiff and members of The Class were harmed by the acts of  
12 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
13 and Class members via their telephone facsimile numbers thereby causing Plaintiff  
14 and Class members to incur certain charges or reduced telephone facsimile time for  
15 which Plaintiff and Class members had previously paid by having to retrieve or  
16 administer messages left by Defendant during those illegal calls, and invading the  
17 privacy of said Plaintiff and Class members.

18           22. Common questions of fact and law exist as to all members of The  
19 Class which predominate over any questions affecting only individual members of  
20 The Class. These common legal and factual questions, which do not vary between  
21 Class members, and which may be determined without reference to the individual  
22 circumstances of any Class members, include, but are not limited to, the following:

- 23           a. Whether, within the four years prior to the filing of this Complaint,  
24 Defendant sent telephone facsimile messages (other than for  
25 emergency purposes or made with the prior express consent of the  
26 called party and with an opt-out notice contained in the messages) to  
27 a Class member using any telephone facsimile machine to any  
28 telephone number assigned to a telephone facsimile service;
- b. Whether Plaintiff and the Class members were damaged thereby, and  
the extent of damages for such violation; and

1 c. Whether Defendant should be enjoined from engaging in such conduct  
2 in the future.

3 23. As a person who received numerous messages from Defendant using  
4 a telephone facsimile machine, without Plaintiff's prior express consent, Plaintiff  
5 is asserting claims that are typical of The Class.

6 24. Plaintiff will fairly and adequately protect the interests of the members  
7 of The Class. Plaintiff has retained attorneys experienced in the prosecution of  
8 class actions.

9 25. A class action is superior to other available methods of fair and  
10 efficient adjudication of this controversy, since individual litigation of the claims  
11 of all Class members is impracticable. Even if every Class member could afford  
12 individual litigation, the court system could not. It would be unduly burdensome  
13 to the courts in which individual litigation of numerous issues would proceed.  
14 Individualized litigation would also present the potential for varying, inconsistent,  
15 or contradictory judgments and would magnify the delay and expense to all parties  
16 and to the court system resulting from multiple trials of the same complex factual  
17 issues. By contrast, the conduct of this action as a class action presents fewer  
18 management difficulties, conserves the resources of the parties and of the court  
19 system, and protects the rights of each Class member.

20 26. The prosecution of separate actions by individual Class members  
21 would create a risk of adjudications with respect to them that would, as a practical  
22 matter, be dispositive of the interests of the other Class members not parties to such  
23 adjudications or that would substantially impair or impede the ability of such non-  
24 party Class members to protect their interests.

25 27. Defendant has acted or refused to act in respects generally applicable  
26 to The Class, thereby making appropriate final and injunctive relief with regard to  
27 the members of the California Class as a whole.

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-27.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

30. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

32. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-27.

33. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

34. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

35. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B);
- An order for injunctive relief prohibiting such conduct by Defendants in the future; and
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C);
- An order for injunctive relief prohibiting such conduct by Defendants in the future; and
- Any and all other relief that the Court deems just and proper.

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**JURY DEMAND**

36. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff reserves their right to a jury on all issues so triable.

Respectfully submitted this 22nd day of August, 2018

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff